

South Carolina General Assembly
118th Session, 2009-2010

A247, R300, S452

STATUS INFORMATION

General Bill

Sponsors: Senators Campbell, Leatherman, Reese, Shoopman, Williams, Mulvaney, Pinckney, O'Dell, Ford, Knotts, Bryant, Land, Grooms, Hutto, Fair, Peeler, Sheheen, Ryberg, Massey, Elliott, Alexander, McGill, Bright, L. Martin, Matthews, Setzler, Rose, Hayes and Campsen

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Companion/Similar bill(s): 275, 3577, 4285

Introduced in the Senate on February 19, 2009

Introduced in the House on March 17, 2010

Last Amended on June 1, 2010

Passed by the General Assembly on June 3, 2010

Governor's Action: June 11, 2010, Signed

Summary: Water Withdrawal, Permitting, Use, and Reporting Act

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
2/19/2009	Senate	Introduced and read first time SJ-4
2/19/2009	Senate	Referred to Committee on Agriculture and Natural Resources SJ-4
1/28/2010	Senate	Committee report: Favorable with amendment Agriculture and Natural Resources SJ-6
2/2/2010		Scrivener's error corrected
3/11/2010	Senate	Committee Amendment Amended and Adopted SJ-14
3/11/2010	Senate	Read second time SJ-14
3/16/2010	Senate	Read third time and sent to House SJ-31
3/17/2010	House	Introduced and read first time HJ-8
3/17/2010	House	Referred to Committee on Agriculture, Natural Resources and Environmental Affairs HJ-8
4/29/2010	House	Committee report: Favorable with amendment Agriculture, Natural Resources and Environmental Affairs HJ-7
4/30/2010		Scrivener's error corrected
5/6/2010	House	Amended HJ-49
5/6/2010	House	Requests for debate-Rep(s). GR Smith, JR Smith, Pinson, Duncan, Stringer, Wylie, Hamilton, Bedingfield, Loftis, Nanney, AD Young, Parker, Allison, RL Brown, Crawford, Lowe, Sellers, Agnew, and Toole HJ-52
5/12/2010	House	Debate adjourned until Thursday, May 13, 2010 HJ-67
5/25/2010	House	Read second time HJ-138
5/25/2010	House	Roll call Yeas-87 Nays-11 HJ-138
5/26/2010		Scrivener's error corrected
5/26/2010	House	Read third time and returned to Senate with amendments HJ-63
6/1/2010	Senate	House amendment amended SJ-106
6/1/2010	Senate	Returned to House with amendments SJ-106
6/3/2010	House	Concurred in Senate amendment and enrolled HJ-60
6/3/2010	House	Roll call Yeas-83 Nays-8 HJ-60
6/7/2010		Ratified R 300

6/11/2010	Signed By Governor
7/1/2010	Effective date 01/01/11
7/8/2010	Act No. 247

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VERSIONS OF THIS BILL

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(A247, R300, S452)

AN ACT TO AMEND CHAPTER 4, TITLE 49, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE “SOUTH CAROLINA SURFACE WATER WITHDRAWAL AND REPORTING ACT”, SO AS TO CHANGE THE NAME TO THE “SOUTH CAROLINA SURFACE WATER WITHDRAWAL, PERMITTING, USE, AND REPORTING ACT”; TO REVISE AND ADD DEFINITIONS OF TERMS USED IN THIS ACT; TO PROVIDE THAT, SUBJECT TO CERTAIN EXCEPTIONS, SURFACE WATER WITHDRAWALS MUST BE MADE PURSUANT TO A PERMIT ISSUED BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL AND TO PROVIDE EXEMPTIONS FROM PERMITTING, REGISTERING, AND REPORTING FOR SPECIFIED USES OF SUCH WITHDRAWALS; TO REQUIRE AGRICULTURAL SURFACE WATER WITHDRAWERS TO REGISTER THEIR SURFACE WATER USE WITH THE DEPARTMENT AND TO GRANDFATHER CURRENTLY REGISTERED WITHDRAWERS AT THEIR AUTHORIZED QUANTITY; TO PROVIDE FOR NONCONSUMPTIVE SURFACE WATER WITHDRAWAL PERMITS; TO PROVIDE FOR SURFACE WATER WITHDRAWAL PERMITS FOR WITHDRAWERS THAT OWN AND OPERATE A LICENSED IMPOUNDMENT; TO REQUIRE PERMITTED AND REGISTERED SURFACE WATER WITHDRAWERS TO REPORT ANNUALLY TO THE DEPARTMENT THE QUANTITY OF WATER WITHDRAWN; TO PROVIDE THAT REGISTERED AND EXEMPT SURFACE WATER WITHDRAWERS MAY APPLY FOR A SURFACE WATER WITHDRAWAL PERMIT; TO PROVIDE THAT THE AUTHORIZED USE OF SURFACE WATER ON NONRIPARIAN LAND MUST BE GIVEN EQUAL CONSIDERATION WITH USES ON RIPARIAN LAND IN PROCEEDINGS RELATING TO WATER USES OR WATER RIGHTS; TO FURTHER SPECIFY SURFACE WATER WITHDRAWAL PERMIT PROCEDURES AND

REQUIREMENTS FOR NEW AND EXISTING SURFACE WATER WITHDRAWERS AND TO PROVIDE THAT EXISTING INTERBASIN TRANSFER PERMITS OR REGISTRATION HOLDERS ARE DEEMED TO BE SURFACE WATER WITHDRAWERS AND TO PROVIDE RENEWAL PROCEDURES FOR THESE PERMIT AND REGISTRATION HOLDERS; TO PROVIDE CRITERIA FOR DETERMINING IF A PROPOSED WATER USE IS REASONABLE; TO PROVIDE PUBLIC HEARING PROCEDURES FOR NEW SURFACE WATER WITHDRAWAL PERMIT APPLICATIONS, INCLUDING APPLICATIONS FOR INTERBASIN TRANSFERS, AND APPLICATIONS FOR SIGNIFICANT WATER QUANTITY INCREASES TO EXISTING PERMITS; TO SPECIFY THE CONTENTS AND DURATION OF AND THE RIGHTS CONFERRED BY A SURFACE WATER WITHDRAWAL PERMIT; TO PROVIDE THE CIRCUMSTANCES UNDER WHICH A PERMIT MAY BE MODIFIED, SUSPENDED, OR REVOKED; TO PROVIDE PROCEDURES AND CRITERIA FOR ISSUING RENEWAL PERMITS AND SIGNIFICANT INCREASES IN WATER WITHDRAWAL QUANTITIES; TO REQUIRE A SURFACE WATER WITHDRAWER TO NOTIFY THE DEPARTMENT OF CERTAIN SURFACE WATER INTAKE CHANGES; TO AUTHORIZE TEMPORARY SURFACE WATER WITHDRAWAL PERMITS; TO PROVIDE PROCEDURES TO MAINTAIN MINIMUM INSTREAM FLOW REQUIREMENTS; TO REQUIRE PERMITTEES TO PREPARE AND MAINTAIN OPERATIONAL AND CONTINGENCY PLANS TO PROMOTE AN ADEQUATE WATER SUPPLY WHEN THE FLOW OF THE SURFACE WATER IS LESS THAN THE MINIMUM INSTREAM FLOW FOR THAT SURFACE WATER SEGMENT; TO PROVIDE THE POWERS AND DUTIES OF THE DEPARTMENT IN ADMINISTERING THIS ACT; TO PROVIDE CIVIL AND CRIMINAL PENALTIES FOR VIOLATIONS OF THIS ACT; TO AMEND SECTION 48-2-30, RELATING TO THE ENVIRONMENTAL PROTECTION FUND, SO AS TO REQUIRE FEES COLLECTED BY THE DEPARTMENT IN THE ADMINISTRATION OF THE SURFACE WATER WITHDRAWAL, PERMITTING, USE, AND REPORTING ACT TO BE DEPOSITED INTO THIS FUND; TO AMEND SECTION 48-2-50, RELATING TO FEES CHARGED BY THE DEPARTMENT IN ADMINISTERING PROGRAMS FROM WHICH FEES ARE DEPOSITED IN THE

ENVIRONMENTAL PROTECTION FUND, SO AS TO ESTABLISH THE MAXIMUM AMOUNT FOR FEES CHARGED FOR SERVICES AND FUNCTIONS PROVIDED PURSUANT TO SURFACE WATER WITHDRAWALS, TO REQUIRE THE DEPARTMENT TO REPORT ANNUALLY TO THE GENERAL ASSEMBLY SURFACE WATER WITHDRAWAL FEES COLLECTED, TO PROVIDE THAT THESE SURFACE WATER WITHDRAWAL FEES ARE REPEALED JANUARY 1, 2013, AND TO PROVIDE THAT NO FEES MAY BY CHARGED FOR SURFACE WATER WITHDRAWAL APPLICATIONS UNTIL A FEE SCHEDULE IS ESTABLISHED BY THE GENERAL ASSEMBLY; TO REPEAL CHAPTER 21, TITLE 49 RELATING TO THE INTERBASIN TRANSFER OF WATER; TO PROVIDE THAT CHAPTER 1, TITLE 49, GENERAL PROVISIONS RELATING TO WATER, WATER RESOURCES, AND DRAINAGE, IS NOT AFFECTED BY AND SUPERSEDES CHAPTER 4, TITLE 49, THE “SOUTH CAROLINA SURFACE WATER WITHDRAWAL, PERMITTING, USE, AND REPORTING ACT”, TO STATE THAT THE INTENTION OF THE GENERAL ASSEMBLY IS NOT TO AFFECT ONGOING LITIGATION BETWEEN SOUTH CAROLINA AND NORTH CAROLINA OR TO PREJUDICE ANY ARGUMENT THAT THIS STATE MAY MAKE IN SUCH LITIGATION.

Be it enacted by the General Assembly of the State of South Carolina:

Chapter revised

SECTION 1. Chapter 4, Title 49 of the 1976 Code is amended to read:

“CHAPTER 4

**South Carolina Surface Water Withdrawal, Permitting
Use, and Reporting Act**

Section 49-4-10. This chapter may be cited as the “South Carolina Surface Water Withdrawal, Permitting, Use, and Reporting Act”.

Section 49-4-20. As used in this chapter:

(1) ‘Affected area’ means that portion of a county or counties within a river basin that, under the circumstances, are determined by

the department to likely be affected by a proposed surface water withdrawal.

(2) 'Agriculture facility' means any land, building, structure, pond, impoundment, appurtenance, machinery, or equipment which is used for the commercial production or processing of crops, trees, livestock, animals, poultry, honeybees, honeybee products, livestock products, poultry products, or products which are used in commercial aquaculture.

(3) 'Agricultural use' means:

(a) plowing, tilling, or preparing the soil at an agricultural facility;

(b) planting, growing, fertilizing, or harvesting crops, ornamental horticulture, floriculture, and turf grasses;

(c) application of pesticides, herbicides, or other chemicals, compounds, or substances to crops, weeds, or soil in connection with the production of crops, livestock, animals, or poultry;

(d) breeding, hatching, raising, producing, feeding, keeping, slaughtering, or processing livestock, hogs, aquatic animals, equines, chickens, turkeys, poultry, or other fowl normally raised for food, mules, cattle, sheep, goats, rabbits, or similar farm animals for commercial purposes;

(e) producing and keeping honeybees, producing honeybee products, and honeybee processing facilities;

(f) producing, processing, or packaging eggs or egg products;

(g) manufacturing feed for poultry or livestock;

(h) rotation of crops;

(i) commercial aquaculture;

(j) application of existing, changed, or new technology, practices, processes, or procedures to an agricultural use;

(k) the operation of a roadside market; and

(l) silviculture.

(4) 'Consumptive use' means any use of water which is not a nonconsumptive use.

(5) 'Department' means the Department of Health and Environmental Control.

(6) 'Diffuse surface water' means water on the surface of the earth not located in defined courses, streams, or water bodies.

(7) 'Drought contingency pond' means a pond or lake designated solely as a supplemental water source in a surface water withdrawer's operational and contingency plan.

(8) 'Emergency withdrawal' means the withdrawal of water, for a period not exceeding thirty days, for the purpose of firefighting,

hazardous substance waste spill response, or both, or other emergency withdrawal of water as determined by the department.

(9) 'Existing surface water withdrawer' means a surface water withdrawer withdrawing surface water as of the effective date of this chapter or a proposed surface water withdrawer with its intakes under construction before the effective date of this chapter or with all necessary applications for its intake permits deemed administratively complete before January first of the year of the effective date of this act.

(10) 'Farm pond' means a pond completely situated on private property that is only used for providing water for agricultural uses.

(11) 'Impoundment' means a dam, dike, natural structure, or any combination thereof that is designed to hold an accumulation of surface water or impede the flow of surface water.

(12) 'Interbasin transfer' means the withdrawal of surface water from a river basin and the movement of that water to a river basin different from the source of the withdrawal.

(13) 'Minimal changes in water quantity' means that greater than ninety percent of the water withdrawn by a surface water withdrawer, based upon the previous twenty-four months of historical data, is returned to the waters of origin; provided, that either the amount of water not returned to the water source does not:

- (a) exceed three million gallons during any one month; or
- (b) significantly reduce the safe yield at the withdrawal point.

(14) 'Minimum instream flow' means the flow that provides an adequate supply of water at the surface water withdrawal point to maintain the biological, chemical, and physical integrity of the stream taking into account the needs of downstream users, recreation, and navigation and that flow is set at forty percent of the mean annual daily flow for the months of January, February, March, and April; thirty percent of the mean annual daily flow for the months of May, June, and December; and twenty percent of the mean annual daily flow for the months of July through November for surface water withdrawers as described in Section 49-4-150(A)(1). For surface water withdrawal points located on a surface water segment downstream of and influenced by a licensed or otherwise flow controlled impoundment, 'minimum instream flow' means the flow that provides an adequate supply of water at the surface water withdrawal point to maintain the biological, chemical, and physical integrity of the stream taking into account the needs of downstream users, recreation, and navigation and that flow is set in Section 49-4-150(A)(3).

(15) 'Minimum water level' means the water level in an impoundment necessary to maintain the biological, chemical, and

physical integrity of the surface water in the impoundment taking into account downstream uses, withdrawals from the impoundment, and recreational and navigational needs as established by an existing federal regulatory process or established through consultation between the department and the operator of the impoundment.

(16) 'Nonconsumptive use' means a use of surface water withdrawn in such a manner that it is returned to its waters of origin within the boundaries of contiguous property owned by the surface water withdrawer with no or minimal changes in water quantity.

(17) 'Permit' or 'surface water withdrawal permit' means a written authorization issued to a person by the department that allows the person to hold and exercise a water right to withdraw surface water pursuant to the terms of the permit and this chapter.

(18) 'Permitted surface water withdrawer' means a person withdrawing surface water pursuant to a surface water withdrawal permit.

(19) 'Permittee' means a person authorized to make withdrawals of surface water pursuant to a surface water withdrawal permit issued by the department.

(20) 'Person' means an individual, firm, partnership, trust, estate, association, public or private institution, municipality, or political subdivision, governmental agency, public water system, or a private or public corporation or other legal entity organized under the laws of this State or any other state or county.

(21) 'Proposed registered surface water withdrawer' means a proposed surface water withdrawer whose planned operations would result in his withdrawals being subject to the reporting but not the permitting requirements of this chapter.

(22) 'Public water system' means a water system as defined in Section 44-55-20 of the State Safe Drinking Water Act.

(23) 'Registered surface water withdrawer' means a person who makes surface water withdrawals for agricultural uses at an agricultural facility that is filing a report pursuant to Section 49-4-50.

(24) 'River basin' means the area drained by a river and its tributaries or through a specified point on a river, as determined in Section 49-4-80(K)(2).

(25) 'Safe yield' means the amount of water available for withdrawal from a particular surface water source in excess of the minimum instream flow or minimum water level for that surface water source. Safe yield is determined by comparing the natural and artificial replenishment of the surface water to the existing or planned consumptive and nonconsumptive uses.

(26) ‘Supplemental water source’ means a source of water different from the source of permitted withdrawal that will be used when an adequate amount of water is unavailable for withdrawal from the permitted source, including, but not limited to, ground water wells, aquifer storage and recovery projects, water storage facilities, drought contingency ponds, and connections to other water providers.

(27) ‘Surface water’ means all water that is wholly or partially within the State, including the Savannah River, or within its jurisdiction, which is open to the atmosphere and subject to surface runoff, including, but not limited to, lakes, streams, ponds, rivers, creeks, runs, springs, and reservoirs, but not including water and wastewater treatment impoundments, off-stream supplemental operations related impoundments, or water storage structures constructed by the surface water withdrawer to provide adequate supplies of surface water during low flow conditions.

(28) ‘Surface water withdrawer’ means a person withdrawing surface water in excess of three million gallons during any one month from a single intake or multiple intakes under common ownership within a one mile radius from any one existing or proposed intake.

(29) ‘Withdrawal’ means to remove surface water from its natural course or location, or exercising physical control over surface water in its natural course or location, regardless of whether the water is returned to its waters of origin, consumed, transferred to another river basin, or discharged elsewhere.

Section 49-4-25. Except as provided in Sections 49-4-30, 49-4-35, 49-4-40, and 49-4-45, all surface water withdrawals by a surface water withdrawer are unlawful unless made pursuant to a surface water withdrawal permit issued pursuant to this chapter. The department may not issue a permit to a new applicant unless the department determines that the applicant’s proposed use is reasonable pursuant to this chapter.

Section 49-4-30. (A) Surface water withdrawals for the following purposes are exempt from the permitting, registering, and reporting requirements provided for in this chapter:

(1) withdrawals associated with active instream dredging or sand mining operations or other nonconsumptive instream mining operations undertaken pursuant to the South Carolina Mining Act;

(2) emergency withdrawals;

(3) agricultural uses from farm ponds:

(a) owned or leased by the person making the withdrawal; or

(b) situated on two or more separately owned parcels of private property if each property owner agrees to the withdrawal;

(4) a person withdrawing surface water from any pond completely situated on private property and which is supplied only by diffuse surface water springs completely situated on the private property or groundwater withdrawals;

(5) naturally occurring evaporation from impoundments;

(6) a person withdrawing, using, or discharging surface water for the purpose of wildlife habitat management; and

(7) a special purpose district withdrawing surface water from any pond completely situated on property owned by a special purpose district and which is supplied only by diffuse surface water or springs completely situated on the special purpose district's property.

(B) Hydropower generation, including pumped storage, is exempt from the permitting requirements of this chapter but not the reporting requirements in Section 49-4-50.

Section 49-4-35. (A) Registered surface water withdrawers must register their surface water use with the department on forms provided by the department and are subject only to the reporting requirements of Section 49-4-50. Registered surface water withdrawers are authorized to withdraw surface water up to their registered amount.

(B) An existing registered surface water withdrawer already reporting its withdrawals to the department as of January 1, 2011, may maintain its withdrawals at its highest reported level or at the design capacity of the intake structure which will be permanent as of January 1, 2011, and is deemed to be registered with the department.

(C) Prior to constructing or installing a water intake, a proposed registered surface water withdrawer must report its anticipated withdrawal quantity to the department for determination as to whether that quantity is within the safe yield for that water source at the time of the request. Upon making a determination, the department must send a detailed description of its determination to the proposed registered surface water withdrawer by registered mail. A proposed registered surface water withdrawer may not begin his proposed withdrawals until he notifies the department of his anticipated withdrawals and the department provides written notification to the proposed registered surface water withdrawer that authorizes him to proceed, if the anticipated withdrawals are within the safe yield at the time of the request. If the department provides a proposed registered surface water withdrawer with written notification that the anticipated withdrawals are not within the safe yield, then the proposed registered surface water withdrawer may not proceed with the construction or installation of a water intake. Proposed registered surface water withdrawers are authorized to make withdrawals up to the department approved

anticipated withdrawal amounts during the first year of registration and are authorized to make withdrawals in the amounts permitted by subsection (A) during subsequent years.

(D) Registered surface water withdrawers that begin surface water withdrawal operations after the effective date of this section shall submit a registration form to the department within thirty days after completing construction of its surface water intake. An existing registered surface water withdrawer that would like to substantially increase the amount of surface water for which he is registered to withdraw must submit the anticipated amount of the increase for consideration by the department in the manner provided for in subsection (C).

(E) The department may modify the amount an existing registered surface water withdrawer may withdraw, or suspend or revoke a registered surface water withdrawer's authority to withdraw water, if the registered surface water withdrawer withdraws substantially more surface water than he is registered for or anticipates withdrawing, as the case may be, and the withdrawals result in detrimental effects to the environment or human health.

(F) Nothing in this chapter prohibits a registered surface water user from applying for and obtaining a surface water withdrawal permit.

Section 49-4-40. (A) Upon proper application, the department shall issue a permit for surface water withdrawals to nonconsumptive users. The application only must require that information necessary for the department to determine that the proposed withdrawals will result in no or minimal changes in water quantity.

(B) Permits issued pursuant to this section must identify the surface water withdrawer, the point of withdrawal, the maximum withdrawal amounts, and the point of return. A permit for a nonconsumptive use is subject only to the reporting requirements of Section 49-4-50.

Section 49-4-45. (A)(1) A new surface water withdrawer that owns and operates a licensed impoundment that utilizes water withdrawn from its licensed impoundment and the withdrawals are subject to review and approval of applicable state and federal laws and regulations, including its impoundment licensing authority, shall be issued a surface water withdrawal permit upon proper application.

(2) Any other new surface water withdrawer that utilizes water withdrawn from a licensed impoundment shall be issued a surface water withdrawal permit upon proper application in accordance with the criteria contained in this chapter. If this new surface water withdrawer has been issued a license, permit, or certification through a

state or federal process that reviewed criteria substantially similar to some or all of the surface water withdrawal criteria contained in this chapter, then the application for the new surface water withdrawal is only required to address the criteria not addressed when the new surface water withdrawer was issued a license, permit, or certification through a state or federal process.

(B) Permits issued pursuant to this section will be required to identify the surface water withdrawer, the point of withdrawal, and the maximum withdrawal amounts and also will require that the applicant comply with the reporting requirements of Section 49-4-50.

(C) Nothing in this chapter shall be construed to diminish the department's authority to regulate facilities under any other applicable laws.

Section 49-4-50. (A) Each permitted or registered surface water withdrawer must file a report with the department of the quantity of water withdrawn by that surface water withdrawer annually before February first, on forms furnished by the department.

(B) The quantity of surface water withdrawn must be determined by one of the following:

- (1) flow meters accurate to within ten percent of calibration;
- (2) the rated capacity of the pump in conjunction with the use of an hour meter, electric meter, or log;
- (3) the rated capacity of the cooling systems;
- (4) any standard or method employed by the United States Geological Survey in determining these quantities;
- (5) any other method found to provide reliable water withdrawal data approved by the department.

(C) Permitted and registered surface water withdrawers who are required to file a surface water withdrawal report pursuant to subsection (A) are not required to submit the report if the monthly quantity withdrawn from each intake is being reported to the department as a result of another environmental program reporting requirement, permit condition, or consent agreement.

Section 49-4-55. (A) A registered surface water withdrawer is not prohibited from applying for a surface water withdrawal permit. The permit application must be considered using the criteria established in the section establishing the permit for which the registered surface water withdrawer is applying. A registered surface water withdrawer that obtains a surface water withdrawal permit must abide by all of the terms of this chapter related to permit holders and is entitled to all of the rights conferred by a permit.

(B) An exempt surface water withdrawer is not prohibited from applying for a surface water withdrawal permit or from registering its use. An exempt surface water withdrawer's application for a permit must be considered using the criteria established in the section establishing the permit for which the registered surface water withdrawer is applying. An exempt surface water withdrawer that obtains a permit or registers its use is entitled to all of the rights conferred upon by a permit or a registered surface water withdrawer, as the case may be.

Section 49-4-60. The use of surface water on nonriparian land authorized pursuant to this chapter is lawful and is entitled to equal consideration with uses on riparian land in any administrative or judicial proceeding relating to the allocation, withdrawal, or use of water or to the modification of a water right. Nothing in this chapter may be construed to authorize access to waters of the State by a person seeking to make a nonriparian use apart from access otherwise lawfully available to that person.

Section 49-4-70. (A) After the effective date of regulations promulgated by the department pursuant to this chapter, a new surface water withdrawer must obtain a surface water withdrawal permit from the department before making surface water withdrawal. A permitted surface water withdrawer that would like to increase its permitted withdrawal amount must apply to the department for the increased amount.

(B)(1) An existing surface water withdrawer must apply for a permit pursuant to this chapter within one hundred eighty days of the effective date of regulations promulgated by the department pursuant to this chapter. An existing surface water withdrawer that applies for a permit must be issued an initial permit but the initial permit and subsequent renewals are not subject to the permitting criteria in Section 49-4-80 and are not subject to Section 49-4-150. The initial permit must authorize the existing surface water withdrawer to withdraw surface water in an amount equal to its documented historical water use, current permitted treatment capacity, design capacity of the intake structure as of the effective date of this chapter, design capacity of a pending intake structure permit application, an amount necessary to recover indebtedness from an outstanding bond or revenue certificate issued through the sale of surface water, or for a publicly owned water utility, the safe yield of the utility's existing or permitted water supply only reservoir, whichever is greatest. An existing surface water withdrawer that applies for an initial permit may continue to withdraw

surface water at its documented levels from the effective date of this act until its initial permit is issued pursuant to this section, unless the applicant requests a lesser quantity.

(2) For an existing surface water withdrawer, the operational and contingency plan required under Section 49-4-160 will only address appropriate industry standards for water conservation.

(3) An existing surface water withdrawer may request that its initial permit allow the surface water withdrawer to withdraw a reasonable amount in excess of the amount provided for in item (1). The department must use the criteria established in Section 49-4-80 to make its determination concerning approval of the quantity requested in excess of the quantity provided for in item (1). However, any increase requested by a surface water withdrawer issued a permit pursuant to Section 49-4-40 or Section 49-4-45 shall be subject only to the requirements contained in the applicable section.

(C) The expiration date of an interbasin transfer permit or an interbasin registration, including any water withdrawal right or authority contained in the permit or registration, in existence on the effective date of this chapter remains effective. For the purposes of this chapter, existing interbasin transfer permit or interbasin registration holders are deemed to be existing surface water withdrawers. A renewal of an interbasin transfer permit or registration must be made pursuant to the criteria established in this chapter for existing surface water withdrawers, except that permits or registrations renewed within three years after the effective date of this chapter must be renewed for a quantity at least equal to the permitted quantity in the expired permit. All other renewals must be issued in accordance with the criterion applicable to existing surface water withdrawers and for a quantity equal to the permitted quantity in the expired permit, unless the department demonstrates by a preponderance of the evidence that the quantity above maximum withdrawals during the permit term are not necessary to meet the permittee's future need.

Section 49-4-80. (A) An application for a surface water withdrawal permit must contain the following information:

- (1) the name and address of the applicant;
- (2) the location of the applicant's intake facilities;
- (3) the place and nature of the proposed use of the surface water withdrawn;
- (4) the quantity of surface water requested and for the applicant's proposed use; and
- (5) the estimated ratio between water withdrawn and consumptive use of water withdrawn.

(B) To determine whether an applicant's proposed use is reasonable, the department must consider the following criteria:

(1) the minimum instream flow or minimum water level and the safe yield for the surface water source at the location of the proposed surface water withdrawal;

(2) the anticipated effect of the applicant's proposed use on existing users of the same surface water source including, but not limited to, present agricultural, municipal, industrial, electrical generation, and instream users;

(3) the reasonably foreseeable future need for the surface water including, but not limited to, reasonably foreseeable agricultural, municipal, industrial, electrical generation, and instream uses;

(4) whether it is reasonably foreseeable that the applicant's proposed withdrawals would result in a significant, detrimental impact on navigation, fish and wildlife habitat, or recreation;

(5) the applicant's reasonably foreseeable future water needs from that surface water;

(6) the beneficial impact on the State and its political subdivisions from a proposed withdrawal;

(7) the impact of applicable industry standards on the efficient use of water, if followed by the applicant;

(8) the anticipated effect of the applicant's proposed use on the following if the permit is granted:

(a) interstate and intrastate water use;

(b) public health and welfare;

(c) economic development and the economy of the State; and

(d) applicable federal laws and interstate agreements and compacts; and

(9) any other reasonable criteria that the department promulgates by regulation that it considers necessary to make a final determination.

(C) The department shall determine the safe yield of the surface water source and the volume of supplemental water supply, if needed, necessary to sustain the applicant's proposed water use. In making the safe yield determination, the department, in consultation with the Department of Natural Resources, may perform stream flow modeling.

(D) The department must determine the minimum instream flow requirement for the surface water body at the point of the proposed withdrawal.

(E) The department must consult with the Department of Natural Resources to determine which, if any, existing stream flow measuring devices should be utilized to quantify the stream flow at the point of the proposed withdrawal. If no existing measuring device is suitable, the

Department of Natural Resources will recommend the location of a new measuring device.

(F) The department must consult with the Department of Natural Resources to quantify the stream flow measured at the specified measuring device that will require a reduction in the applicant's water withdrawal because of inadequate stream flow at the point of withdrawal.

(G) The department shall develop a mechanism for notifying the applicant that its withdrawal must be reduced because of inadequate stream flow at the point of the proposed withdrawal.

(H) The department must share all findings of subsections (C) through (G) with the applicant.

(I) If the department determines that a supplemental water supply is required, the applicant must demonstrate that the supplemental water supply will be comprised of sources other than the surface water source from which the surface water withdrawals are made during nonlow flow conditions. This section does not prevent a licensee from replenishing his supplemental water supply from the source of the surface water withdrawal during appropriate flows.

(J) Upon a determination by the department that, based upon its examination of the criteria in subsection (B), the applicant's use is reasonable, the department shall issue a permit to the applicant.

(K)(1) Except as provided in Section 49-4-90, upon receipt of a new surface water withdrawal permit application or an application to significantly increase the amount of water that may be withdrawn under an existing permit and the appropriate filing fee, the department must, within thirty days, provide the public with notice of the application. In addition to the department's usual public notice procedures, the department must publish notice of the application in a newspaper of statewide circulation and in the local newspaper with the greatest general circulation in the affected area and on the department's website. The public notice must contain the location and amount of the proposed withdrawal, the use for which the water will be withdrawn, and the process for requesting a public hearing concerning the application. If within thirty days of the publication of the public notice the department receives a request to hold a public hearing from at least twenty citizens or residents of the affected area, the department must conduct a hearing. The hearing must be held within ninety days at an appropriate time and in an appropriate location near the specific site from which surface water withdrawals are proposed to be made.

(2) The department shall by regulation delineate and designate river basins to be used when determining the affected area for a particular surface water withdrawal application. In undertaking this

task, the department shall initially establish fifteen river basins, including the watershed of each of the following fifteen rivers or river systems:

- (a) Upper Savannah;
- (b) Lower Savannah;
- (c) Saluda;
- (d) Broad;
- (e) Congaree;
- (f) Catawba-Wateree;
- (g) Lynches;
- (h) Pee Dee;
- (i) Little Pee Dee;
- (j) Black;
- (k) Waccamaw;
- (l) Lower Santee;
- (m) Edisto;
- (n) Ashley-Cooper; and
- (o) Combahee-Coosawhatchie.

(L) If the department determines that a new surface water withdrawal permit application or an application to significantly increase the amount of water that may be withdrawn under an existing permit must be denied because there is not enough water in the safe yield, the department may meet with the other permitted withdrawers in the affected stream segment or basin, as appropriate, to determine whether the other permitted withdrawers can reach mutually agreed upon permit reductions to accommodate the applicant.

Section 49-4-90. (A) The department must hold a public hearing concerning new surface water withdrawal permit applications for interbasin transfers. The hearing must be held at an appropriate time and in an appropriate location near the withdrawal point of the interbasin transfer. The hearing may not be held until after at least thirty days' notice is given to the public in the manner provided in this section. The notice must:

- (1) include a nontechnical description of the applicant's request;
- (2) include a conspicuous statement in bold type describing the effects of the interbasin transfer on the river basin from which the water will be withdrawn and the river basin into which the withdrawn water will be transferred; and
- (3) describe the procedure that a person must follow to submit a comment concerning the proposed interbasin transfer.

(B) Upon the receipt of a new surface withdrawal permit application for an interbasin transfer and the appropriate filing fee, the department

must, within thirty days, provide notice as required in this section, in the following manner:

- (1) by publication in the South Carolina State Register;
- (2) by publication in a newspaper of general circulation in the affected area of the river basin downstream from the point of withdrawal;
- (3) by publication on the department's website; and
- (4) through standard United States mail to:
 - (a) any person holding a permit issued by the department authorizing surface water withdrawals, including interbasin transfers, from the river basin from which the water for the proposed transfer would be withdrawn;
 - (b) any person holding a National Pollutant Discharge Elimination System (NPDES) wastewater discharge permit authorizing wastewater discharge into the river basin where the proposed withdrawal point of the proposed interbasin transfer is located;
 - (c) any city or county governing body whose jurisdiction is located entirely or partially within the river basin that is the source of the proposed transfer;
 - (d) the governing body of a public water supply system that withdraws water from the same river basin where the proposed withdrawal point of the proposed transfer is located; and
 - (e) any agency from another state where an interstate water basin is the source of the proposed transfer.

Section 49-4-100. (A) Surface water withdrawal permits issued by the department must:

- (1) identify the location of the permittee's intake facility used or constructed to make withdrawals pursuant to the permit;
- (2) specify the amount of water that may be withdrawn;
- (3) specify the amount of water to be discharged back into the surface water body and location of the discharge;
- (4) specify the volume of supplemental water supply if needed;
- (5) specify the minimum instream flow at the point of withdrawal;
- (6) specify the minimum instream flow triggers that will determine if the permittee's withdrawal must be reduced;
- (7) specify the stream flow, that will be used to notify the applicant of starting the reduction of withdrawal;
- (8) specify the date upon which the permit expires; and
- (9) clearly state that the terms and conditions of the permit are subject to the provisions of the South Carolina Drought Response Act.

(B) Permits issued by the department, unless revoked or suspended pursuant to this chapter, shall be valid for a period to represent the economic life of any capital investments made by the permittee necessary to carry out the permittee's use of the withdrawn water. Permits must be issued for:

(1) twenty years, or a greater period the department considers reasonable based upon its review of all the facts and circumstances relevant to a proposed withdrawal not to exceed an additional twenty years;

(2) thirty years for a permittee entitled to an initial permit pursuant to Section 49-4-70(B), or a greater period the department considers reasonable based upon its review of all the facts and circumstances relevant to the proposed withdrawal not to exceed an additional ten years; or

(3) any additional period necessary, not to exceed a total of fifty years, for a municipality or other governmental body to retire a bond it issued to finance the construction of waterworks.

Section 49-4-110. (A) A surface water withdrawal permit confers upon the permittee a right to withdraw and use surface water pursuant to the terms and conditions of the permit. The permit does not convey a property right in the water to the permittee. Nothing in this chapter shall affect any requirement under any other law or regulation, including any requirement for the owner or operator of a proposed new or expanding water withdrawal facility that will be constructed within the boundaries of a reservoir operated by a different entity to obtain the reservoir operator's approval before constructing and operating the proposed new water withdrawal facility or expanding an existing water withdrawal facility.

(B) Surface water withdrawals made by permitted or registered surface water withdrawers shall be presumed to be reasonable. No private cause of action for damages arising directly from a surface water withdrawal by a permitted or registered surface water withdrawer may be maintained unless the plaintiff can show a violation of a valid permit or registration.

(C) Issuance of a surface water withdrawal permit under this chapter does not relieve the permittee from being required to obtain and comply with any other permits or approvals that may be required under other laws, or existing agreements, or under common law. Nothing in this chapter shall prevent an impoundment licensee from requiring persons seeking to withdraw water from a licensed reservoir to comply with any and all conditions that the licensee is empowered to require under its license and applicable laws.

Section 49-4-120. (A) The department may modify, suspend, or revoke a permit under the following conditions:

- (1) the permit holder withdraws water not authorized by his permit or fails to comply with the terms and conditions of his permit;
- (2) the permit holder obtains a permit by misrepresentation or fails to disclose a material fact in his application;
- (3) the permit holder ceases to withdraw water for a period of at least thirty-six consecutive months; or
- (4) a permanent change in natural conditions results in a permitted activity endangering human health or the environment.

(B) Surface water permits are transferable with the prior written consent of the department.

(C)(1) A permittee may apply for a renewal of his permit no sooner than six months before his permit expires. A permit shall remain valid during the department's consideration of a renewal application if the permittee files a renewal application prior to the expiration date of his permit. Renewal applications take priority over permit applications for new withdrawals. The renewed permit must be issued in accordance with the criterion applicable to the issuance of the initial permit and for a quantity at least equal to the expired permit unless the department demonstrates that the quantity above maximum withdrawals during the permit term are not necessary to meet the permittee's future needs.

(2) An application to modify an existing permit for a significant increase in the quantity of the withdrawal must be evaluated using the criteria provided in Section 49-4-80. However, any significant increase in surface water withdrawals authorized pursuant to Section 49-4-40 or Section 49-4-45 shall be subject only to the requirements set forth in that section.

Section 49-4-130. A surface water withdrawer must provide the department with prior written notice of the construction of a new surface water intake that changes the method of measuring the water the permittee is withdrawing, cessation of its surface water withdrawals, a proposed change in ownership, or the abandonment of a surface water intake.

Section 49-4-140. The department may issue a temporary surface water withdrawal permit to a new applicant while his application is pending, if the temporary permit is necessary to address an imminent hazard to public health or the applicant demonstrates that without a temporary permit he will suffer physical or financial damage. A temporary permit must contain an expiration date, which must not be

more than one hundred eighty days after it was issued. The issuance of a temporary permit does not guarantee that the department will issue a permanent permit to the applicant.

Section 49-4-150. (A)(1)(a) For new surface water withdrawers located on a stream segment not influenced by a licensed or otherwise flow controlled impoundment, the surface water withdrawal permit authorizes withdrawals up to the permitted amount pursuant to this chapter's definition of minimum instream flow subject to the provisions contained in subsection (A)(1)(b).

(b) Anytime the flow at the point of the permitted withdrawal is less than or equal to the minimum instream flow and taking into consideration natural and artificial replenishment of the surface water and existing or planned consumptive and nonconsumptive uses affected by the withdrawal downstream, the permitted surface water withdrawer must implement applicable portions of his water contingency plan and will discontinue consumptive use from the surface water source. If after all reasonable contingency plans have been implemented, and the surface water withdrawer is within fifteen days of exhausting the usable water supply from his supplemental water source, he may then give notice to the department that he is exhausting his supplemental water sources and that he intends to return to the withdrawal source in amounts up to his permitted amount. Upon receiving notice, the department must determine whether all or any portion of the withdrawal will result in a significant negative impact to an existing user or the environment if the permitted withdrawals are resumed. If the department does not make its determination within ten days of receipt of notice, the permittee may make withdrawals up to the permitted amount until the department notifies the permittee whether all or any portion of the withdrawal will result in a significant negative impact to an existing user or the environment during this low flow period.

(2)(a) The permitted surface water withdrawer may withdraw water from the permitted surface withdrawal point in order to refill his supplemental water source, or other drought contingency water supply vessels, anytime the river flow exceeds the minimum instream flow.

(b) The permitted surface water withdrawer utilizing a drought contingency pond as all or some of his supplemental water source may withdraw the entire volume of water from the pond during low flow periods requiring supplemental water source usage. Water withdrawn from drought contingency ponds are not subject to environmental and permitting restrictions.

(c) New surface water withdrawers are not required to engineer the supplemental water source identified in their contingency plan any larger than the quantity that allows for facility operations during twenty percent mean annual daily flow conditions, based upon a review of historical low flow data and projected facility consumptive water uses during low flow periods. A new surface water withdrawer may not return to the withdrawal source when his supplemental water source is exhausted unless he engineered his supplemental water source to meet the specifications of this subsection.

(3) For surface water withdrawal points located on a surface water segment downstream of and influenced by a licensed or otherwise flow controlled impoundment, the minimum instream flow shall be the flow specified in the license by the appropriate governmental agency. Surface water withdrawal points downstream of a licensed or otherwise flow controlled impoundment are considered to be influenced by the impoundment unless it can be demonstrated by the department through flow modeling and analysis of flow data that the withdrawal point is no longer materially influenced by the impoundment. The minimum instream flow set in this item does not apply to withdrawal points located downstream of an impoundment that are beyond the influence of the impoundment. (4) When a surface water withdrawal point is located on a licensed or otherwise flow controlled impoundment, a withdrawal permit may not authorize the withdrawal of surface water in an amount that would cause a reservoir:

- (a) water level to drop below its minimum water level; or
- (b) to be unable to release the lowest minimum flow specified in the license for that impoundment as issued by the appropriate government agency.

(5) When a surface water withdrawal point is located on an impoundment that serves as a water supply for a federally licensed facility that is also an existing surface water withdrawer, a withdrawal permit may not authorize any new surface water withdrawer to withdraw surface water in an amount that would negatively impact the continued operations of the federally licensed facility. The requirements contained in this item do not apply to an expansion or addition of units at a federally licensed facility.

(6) The requirements of items (1) through (4) do not apply to public water suppliers. Public water suppliers are required to implement their contingency plan measures, applicable to their service territory, commensurate with the drought level declared by the State Drought Response Committee and in accordance with any drought response plan required by the owner of a licensed impoundment.

(B) When determining the amount of water available to be withdrawn for future surface water withdrawers in a particular stream segment, the department shall determine the inflow at the beginning of the stream segment, as well as the inflow from tributaries, based on historical flow. Also, the department shall account for returns of water to the stream segment from all sources, including, but not limited to, municipalities, utilities, and industries.

Section 49-4-160. (A) Each permittee must prepare and maintain on site, available for inspection, an operational and contingency plan to promote an adequate water supply from the surface water during times when the actual flow of the surface water is less than the minimum instream flow for that particular surface water segment. The plan must identify actions to be taken, as applicable, to address low flow conditions, including water conservation, supplemental water supplies, off-stream water storage, seasonal water flow fluctuation withdrawals, and hydroelectric operations in controlled surface waters. For applicable new surface water withdrawers with an operational and contingency plan that identifies one or more supplemental sources of water to be used for continued facility operations during minimum instream flow conditions, the amount of supplemental water should be calculated on a reasonable and responsible basis taking into account a review of historical flow records for the stream at or near the proposed withdrawal point in order to identify the years of historical record where flows at that stream point dropped below minimum instream flow, and the consumptive amount of water that is projected to be needed by the new surface water withdrawer in order to continue to operate during a period of time identified as that stream segment's historical average minimum instream flow conditions. The existence of a plan is deemed to be an enforceable part of the permit under which the permittee is withdrawing surface water and shall be deemed to control a permitted surface water withdrawal in situations where the actual flow of the surface water is less than the minimum instream flow for that particular stream segment.

(B) Nothing in this section limits or precludes any action authorized by the South Carolina Drought Response Act. In the event that an action authorized by the South Carolina Drought Response Act conflicts with this subsection or a permitted use, the action taken pursuant to the South Carolina Drought Response Act supersedes any actions taken pursuant to this subsection or the permit.

Section 49-4-170. (A) In addition to any other powers and duties, the department may:

(1) promulgate regulations necessary to implement the policies and purposes of this chapter;

(2) enter upon any land or water for the purpose of conducting investigations, examinations, or surveys necessary to carry out its duties and responsibilities provided in this chapter;

(3) receive financial and technical assistance from private entities, the federal government, or another state agency; and

(4) take any action reasonable and necessary to enforce the provisions of this chapter.

(B)(1) The department may, in consultation with the Department of Natural Resources, negotiate agreements, accords, or compacts on behalf of and in the name of the State with other states or the United States, or both, with any agency, department, or commission of either, or both, relating to transfers of water that impact waters of this State, or are connected to or flowing into waters of this State. Any agreements, accords, or compacts made by the board pursuant to this section must be approved by concurrent resolution of the General Assembly prior to being implemented. The department also may represent the State in connection with water withdrawals, diversions, or transfers occurring in other states which may affect this State. The provisions in this section do not apply to the Office of Attorney General or any pending or future criminal or civil actions, lawsuits, or causes in which the State is a party or interested.

(2) The department must notify the Chairman of the Senate Agriculture and Natural Resources Committee and the Chairman of the House Agriculture, Natural Resources, and Environmental Affairs Committee when the department enters into negotiations or otherwise represents the State as provided in item (1). The department also must periodically report, as necessary or upon request, to the chairmen concerning the progress of the negotiations or representation.

Section 49-4-180. (A) A surface water withdrawer who commits a violation of this chapter:

(1) is subject to a civil penalty of not more than ten thousand dollars for each day that the violation occurred; or

(2) is guilty of a misdemeanor and, upon conviction, must be fined not more than ten thousand dollars for each day that the violation occurred, if the violation is wilful.

(B) All penalties and fines assessed and collected pursuant to this chapter must be deposited in the general fund of the State.”

Fees to be deposited in Environmental Protection Fund

SECTION 2. Section 48-2-30(B) of the 1976 Code is amended by adding an appropriately numbered new item at the end to read:

“() Surface Water Withdrawal, Permitting, Use, and Reporting Act.”

Surface water withdrawal fees; annual report; prospective repeal

SECTION 3. A. Section 48-2-50(H) of the 1976 Code is amended by adding an appropriately numbered item at the end to read:

“() Surface Water Withdrawals:

(a) Existing surface water withdrawal permit - application processing fee - \$1,000;

(b) New surface water withdrawal permit - application processing fee - \$7,500;

(c) Modification of surface water withdrawal permit - application processing fee - \$2,000;

(d) Renewal of surface water withdrawal permit with modifications application processing fee - \$1,000;

(e) Surface water withdrawal annual operating fee per permitted intake - \$1,000.”

B. The department must make an annual report to the General Assembly concerning the fees collected pursuant to this SECTION.

C. The new item added to Section 48-2-50(H) by this SECTION is repealed January 1, 2013. No new fees may be charged for Surface Water Withdrawal applications following that date without an act of the General Assembly setting the fee schedule.

Repeal; effect of act

SECTION 4. A. Chapter 21, Title 49 of the 1976 Code is repealed.

B. Chapter 1, Title 49 of the 1976 Code is not affected by and supersedes Chapter 4, Title 49 of the 1976 Code, as amended by SECTION 1 of this act.

Intent of General Assembly

SECTION 5. It is the intention of the General Assembly to not affect or prejudice in any way the ongoing litigation between the states of

South Carolina and North Carolina in the Supreme Court of the United States or any litigation related thereto, nor is it the intent of the General Assembly to prejudice any argument that the State of South Carolina may make in such litigation.

Savings clause; transfer provisions

SECTION 6. (A) The repeal or amendment by this act of any law, whether temporary or permanent, does not affect pending actions, rights, duties, or liabilities founded on it, or alter, discharge, release, or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision expressly provides it. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws. Any state agency, board, commission, or council to which are transferred the powers, duties, and functions of any state agency, board, commission, or council relating to the pending proceeding must be substituted as a party in interest.

(B) Any statute enacted and any rule or regulation made in respect to any state agency, board, commission, or council or function transferred to, or consolidated, coordinated, or combined with any other state agency, board, commission, or council or function under the provisions of this act before the effective date of the transfer, consolidation, coordination, or combination, except to the extent repealed, modified, superseded, or made inapplicable by or under the authority of law, shall have the same effect as if the transfer, consolidation, coordination, or combination had not been made. But when any such statute, rule, or regulation has vested functions in the state agency, board, commission, or council from which the transfer is made under the act, the functions, insofar as they are to be exercised after the transfer, must be considered as vested in the state agency, board, commission, or council to which the transfer is made under the act.

Severability clause

SECTION 7. If any section, subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not

affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, items, subitems, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Time effective

SECTION 8. This act takes effect January 1, 2011.

Ratified the 7th day of June, 2010.

Approved the 11th day of June, 2010.
